STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v BION JAMES MCVEIGH, Defendant-Appellant.	UNPUBLISHED August 7, 2007 No. 270006 Ionia Circuit Court LC No. 05-013155-FH

Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

A jury convicted defendant of resisting or obstructing a police officer, MCL 750.81d(1), and the trial court sentenced defendant as an habitual offender, third offense, MCL 769.11, to serve a term of imprisonment of one to four years. Defendant appeals as of right. We affirm. This case is being decided without oral argument in accordance with MCR 7.214(E).

A State Police Trooper testified that he had begun to investigate defendant over another matter, and in the course of the investigation he came to suspect that defendant, a person subject to the registration requirements of the Sex Offenders Registration Act (SORA),[1] had changed his residential address without providing notice as required by the act. See MCL 28.725(1). The officer recounted that he spoke with defendant on the porch of defendant's residence of record, where the officer answered in the affirmative when defendant asked if he was to be arrested, upon which defendant moved toward the door. The officer advised defendant that he could not enter the house because he was under arrest, and grabbed defendant's arm, but defendant pulled away, entered the house with the officer in pursuit, pulled away from the officer again, the locked himself in the bathroom. According to the officer, he tried to shoulder the door, after which defendant unlocked it, and was generally cooperative thereafter.

Defendant was bound over for trial on charges of resisting and obstructing and violating the SORA. At trial, defense counsel persuaded the trial court to dismiss the SORA charge at the close of the prosecutor's proofs. The trial court so advised the jury, adding, "You are not to attach any undue significant to these remarks. You're not to hold that against either side. I'm

[1] MCL 28.721 *et seq.*

simply telling you so that you do know as the case now proceeds the case will be on count two, that being resisting or obstructing a police officer." The resisting and obstructing charge went to the jury, which found defendant guilty as charged.

On appeal, defendant argues that he was erroneously bound over for trial on the SORA charge because the evidence did not support that action, and therefore he was unfairly prejudiced in connection with his resisting and obstructing conviction by the presentation of information about that dismissed charge at trial. We disagree with the latter assertion.

"[A]n evidentiary deficiency at the preliminary examination is not ground for vacating a subsequent conviction where the defendant received a fair trial and was not otherwise prejudiced by the error." *People v Hall*, 435 Mich 599, 601; 460 NW2d 520 (1990). In this case, assuming without deciding that defendant was erroneously bound over for trial on the SORA charge, we nonetheless conclude that no prejudice resulted, and thus that no appellate relief is in order.

In his brief on appeal, defendant argues that all the evidence relating to the SORA issue "connotes images of a dangerous predator on the loose in the local community . . . ." But there is no logical connection between failing to comply with the reporting requirements of the SORA, or committing a crime that brings SORA registration requirements to bear, and resisting or obstructing a police officer, beyond such speculation that a jury concerned about the former would for that reason elect to convict of the latter.

"It is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). In this case, the jury was informed that the SORA charge had been dismissed, and that it was not to hold that development against either side. The court's instruction directly on point should have cured any potential prejudice.

Defendant additionally argues that defense counsel was ineffective for failing to move to quash the information in connection with the SORA charge. We disagree. "In reviewing a defendant's claim of ineffective assistance of counsel, the reviewing court is to determine (1) whether counsel's performance was objectively unreasonable and (2) whether the defendant was prejudiced by counsel's defective performance." *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

Defendant cites no authority for the proposition that a defense attorney who wins dismissal of a charge at the close of the prosecutor's proofs may be deemed constitutionally ineffective for having failed to seek that dismissal earlier in the proceedings, and we know of none. Because defendant shows neither an error on defense counsel's part in the matter, nor any resulting prejudice, we must reject this claim of error.

Affirmed.

/s/ Michael R. Smolenski
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly